IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.13 OF 2000

1. Shri Narayan Babal Jan,
   major of age, resident of
   Amarkhane,Keri,Taluka
   Ponda-Goa;

2. Smt. Laxmi Narayan Jan,
   wife of Narayan Babal Jan,
   major of age, residing at
   Amarkhane,Keri,
   Taluka Ponda-Goa;

3. Shri Deepak Narayan Jan,
   Major of age, resident of
   Amarkhane, Keri,
   Taluka Ponda;Goa;

4. Shri Sandeep Narayan Jan,
   of major age, resident of
   Amarkhane, Keri,
   Taluka Ponda-Goa ... APPELLANTS.

VERSUS

1. Shri Anil Mahadev Salgaonkar,
   Driver, Kadamba Transport
   Corporation Ltd.,
   Kadamba Interstate Bus Terminus,
   Panaji, Goa;

2. Kadamba Transport Corporation Ltd.
   through its Managing Director,
   having its office at Kadamba
   Interstate Bus Terminus,
   Panaji-Goa ... RESPONDENTS.

Mr. S.N. Joshi, Advocate for the Appellants.

Mr. A.R. Kantak, Advocate for the Respondent NO.2.

CORAM : F.I. REBELLO,J.

DATED : JULY 11, 2003.

ORAL JUDGMENT

This is an Appeal by the claimant whose

application had been rejected by the Motor Accident Claims Tribunal. The learned Administrative Tribunal found that the Appellant was unable to prove that the Respondent No.1 drove the bus GDX-70 from opposite direction in a rash and negligent manner and dashed on the cycle of Prakash Narayan Jan. In the claim petition under Section 166 of the Motor Vehicles Act, the case of the Applicant who is the father of the deceased was that on 30th May 1993 at 6.45 p.m. when the deceased was riding a cycle towards Ponda met with an accident on account of the rash and negligent driving of the driver of the vehicle GDX-70, Respondent No.1, which resulted in the death of the deceased and consequently the claim for compensation.

Respondents filed their written statement and specifically denied that there was any rash and negligent driving on the part of the Respondent No.1. It is set out that Respondent No.2 at the relevant time was proceeding up the slope in a very slow speed and in high gear and there was consequently no occasion whatsoever for any rash or negligent driving. It is also set out that the bus was on the extreme left side of the road when the cyclist came down on the slope at a fast speed, lost control of the cycle and came on the wrong

side of the road to dash against the bus of Respondent No.2. It is, therefore, their contention that the Respondent is not liable to pay any compensation.

2. On behalf of the Appellant, C.W.1 who was aged 62 at the time of the evidence, has deposed insofar as the amount of compensation is concerned as he was personally not present at the scene of the accident. Similarly C.W.2 has also deposed about the compensation, so also C.W.3. C.W.4 Ramesh Satarkar is the witness examined on behalf of the Appellants herein. It is his contention that the bus was driven by Respondent No.1 in a rash and negligent manner. There are no other eye witnesses insofar as the incident is concerned.

On behalf of the Respondents, one Kishore Desai, conductor of the bus was examined who has deposed to the fact that the bus was being driven at a speed of 20 to 25 Kms. per hour. The cyclist dashed against the bus and fell down. The cyclist was coming from another direction and the accident arose on account of the fault of the cyclist.

3. The learned Claims Tribunal after

examining the evidence, held that the evidence of C.W.4 could not be accepted on account of various contradictions.

4. Even on re-appreciation of the evidence considering the evidence of C.W.6 Rohidas Gaude, a panch witness for the scene of panchanama, the conclusion would be the same. He has identified the sketch Exhibit C.W.6/B. The position of the cycle and the bus is not disputed. The contention of C.W.4 was that after the bus hit the motor-cyclist, the bus went ahead by several metres before stopping. A perusal of the panchanama would discount this fact. The bus is on its correct side, the cyclist on its wrong side. The cycle and the bus are seen adjacent to each other. Considering that, the version given by C.W.4 will have to be disbelieved. If the panchanama is accepted, the doctrine of res ipsa loquitur will apply. Considering that, in my opinion, I do not find this is a fit case where this Court should interfere with the impugned award and, consequently, the Appeal stands rejected.

F.I. REBELLO,J.